

(2000) 04 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2659 of 2000 and Batch

G. Nagaraju

APPELLANT

Vs

Government of Andhra Pradesh and others

RESPONDENT

Date of Decision : 12-04-2000

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 448
Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 8
Motor Vehicles Act, 1988 — Section 107, 111, 138, 176, 2

Citation : (2000) 2 ACC 635 : AIR 2000 AP 442 : (2000) 3 ALD 593

Hon'ble Judges : P. Venkatarama Reddi, J; D.S.R. Varma, J

Bench : Division Bench

Advocate : Mr. E. Maruthi Raja, Mr. B. Siva Ram Krishnaiah, Mr. P. Venkata Rao, Mr. K.R. Jwala and Mr. Badana Bhaskara Rao, for the Appellant; Special Government Pleader for Taxes and Government Pleader for Transport, for the Respondent

Judgement

P. Venkatarama Reddi, J.—The petitioners who are transport operators and whose vehicles were seized by the checking Officers for non production of certain documents and for alleged contraventions of law in purported exercise of power u/s 8 of APMV Taxation Act and Section 207 of Motor Vehicles Act, have filed these writ petitions questioning the vires of Rule 448-B of AP MV Rules and for a "consequential order" to direct the respondents to release the vehicles forthwith. This Court at the stage of admission of the writ petitions granted interim directions to release the vehicles subject to the condition of payment of Rs.5,000/- or Rs.3,500/- and furnishing an undertaking not to alienate the vehicle. On compliance with those conditions, the petitioners got release of the vehicles. Thus, no further relief need be granted to the petitioners. However, as the validity of Rule 448-B has been assailed and that question ought to be resolved at the earliest in the interest of all concerned, we have heard the arguments on the question of validity of rule.

2. The impugned Rule 448-B introduced by G.O. 123, Transport II, dated

4-6-1999 reads as follows:

"448-B Release of seized and detained vehicles :--(1) An application for release of a vehicle seized and detained under sub-section (1) of Section 207 shall be in the form of a memorandum in duplicate with relevant documents duly enclosing a fee of rupees twenty five.

(2) The Secretary, Regional Transport Authority, of the Region shall entertain application for release of vehicles seized and detained by his Subordinate Officers :

Provided that application shall be made to the Deputy Transport Commissioner in the case of check made by the Secretary, Regional Transport Authority in the cadre of Regional Transport Officer and the Transport Commissioner, if the Secretary, Regional Transport Authority is of the cadre of Deputy Transport Commissioner or Joint Transport Commissioner".

3. It is not out of place to quote the preceding Rule 448-A :

"Rule 448-A Procedure of seizing and detaining a Motor Vehicle:--When a motor vehicle is seized and detained by any Officer referred to Rule 448, he shall take the following steps :

(i) arrangements shall be made for temporary safe custody of the motor vehicle in the nearest police station or at any appropriate place;

(ii) the fact of seizure and detention shall be informed without delay to the Secretary, Regional Transport Authority of the Region and the Secretary, Regional Transport Authority of the Region to which the motor vehicle belongs;

(iii) the Officer who seized and detained the motor vehicle may release the vehicle of the offence for which it is seized and detained are compounded u/s 200 under intimation to the Secretaries of Regional Transport Authorities mentioned in clause (ii);

(iv) where prosecution of the driver or owner or both is necessary, charge-sheets against them shall be filed before the concerned Magistrate within three days from the date of seizure and the motor vehicle shall be released by the Officer who detained it after the prosecution is completed under intimation to Secretaries of Regional Transport Authorities mentioned in clause (ii);

(v) Mahazar of the vehicles is to be carried out nothing its condition, specifying the number and condition of each tyre fitted and parts which are easily removable, replaceable and tamperable, (viz., Batteries, Fuel-pump, Dynamo; (Deferential Engine) and extra lights etc.,) and loose parts, stephney tyres and tools and a copy of it is to be delivered to the person from whom it is seized duly signed."

Both the rules owe their origin to Section 207 of the MV Act, 1988.

4. At the outset, we may mention that a Division Bench of this Court to which

one of us (PVR, J.) was a party decided a Batch of writ petitions in which the orders of the Transport Authorities requiring the petitioners to pay the estimated tax as a precondition for the release of the vehicles were challenged. Directions were sought for in these writ petitions for the release of the vehicles. The said judgment was reported in *M. Venkateswara Rao and Others Vs. Secretary, R.T.A. and Others*, . This Court indicated that the vehicle owner should first approach the concerned Transport Authority for the release of the vehicle by filing an application u/s 207(2) read with the Rules and the Court also directed that such applications should be dealt with with utmost expedition and if no orders are passed within three days, the aggrieved person can invoke the writ jurisdiction of this Court under Article 226. This Court also dealt with certain other questions as regards the scope of power of seizure u/s 207, MV Act and Section 8 of APMV Taxation Act. The Division Bench also referred to with approval a decision of B. Sudershan Reddy, J., in which the procedure for obtaining the release of vehicles seized u/s 207(1) was laid down. Inter alia, it was held that the application should be filed with requisite fee u/s 207 read with Rule 448-B i.e., the impugned Rule. The next round of litigation has started with the filing of these writ petitions. In the garb of challenging the Rule 448-B, which is apparently innocuous, the petitioners sought for "consequential order" for the release of the vehicles, by-passing the procedure indicated in the aforementioned decisions. We fail to understand how it can be a "consequential order". Even if Rule 448-B is assumed to be invalid, it does not follow that there should be a direction to release the vehicle. The question whether in the facts and circumstances of the case, the release could be ordered, is an independent issue. Be that as it may, as already observed, we would like to remove the lid of uncertainty at the earliest and thwart the attempts to overcome the recent decisions of this Court channelising the procedure to be invoked for obtaining the release of the vehicles. With this brief introduction, we would like to proceed to consider the validity of the impugned rule.

5. It is the contention of the learned Counsel for the petitioners that the State Government does not have the rule making power to frame the impugned Rule 448-B. Though it is indicated in the notification introducing the rule that the rule was framed in exercise of powers u/s 207(2) and Section 138, none of the said rules has application. It is further submitted by the learned Counsel that the State Government does not derive the rule making power from any residuary provision to make the rules to carry out the purposes of the Act. It is pointed out that almost every Chapter in the MV Act has a separate provision for making rules. But Chapter XIII under which Section 207 is found, does not provide for any rules being framed. It is further contended that fee cannot be levied without authority of law and there being no specific provision to prescribe the fees for filing the application for release of the vehicles, the rule to that extent is invalid. The other objection to the rule according to the learned Counsel for the petitioners-Mr. Sivaramakrishnaiah is that the rule insofar as it nominates the Secretary, Regional Transport Authority alone to receive and dispose of the

applications for release of the vehicles is beyond the scope of Section 207, But for Rule 448-B, the person whose vehicle is detained could as well approach the checking Officer himself and on showing the valid reasons could have requested him to release the vehicle then and there rather than approaching the higher authorities. It is submitted that the approach to the higher authorities will often involve delay and there is no reason why the petitioners should not be enabled to obtain the release of the vehicle from the checking Officer.

6. It is true, as contended by the learned Counsel for the petitioners that Section 138 has no application and does not confer a specific rule making power regulating the procedure for obtaining the release of the vehicle seized. We also accept the contention of the learned Counsel that Section 207(2) does not provide for collection of fee. While on the question of payment of fee of Rs.25/- along with the application for release, we must express our doubts whether the petitioners are genuinely interested in challenging that provision. The payment of Rs.25/- towards the fee, by any reasonable standards, cannot be a source of irritant. The conduct of the petitioners in filing writ petitions by paying Court fee of Rs.100/- while objecting to the payment of fee of Rs.25/- to the Transport Department is, to say the least, difficult to appreciate. Be that as it may, we will test from the strict legal angle whether the provision for collection of fee by means of rule making power is authorised under the Act.

7. It is a settled proposition of law that a mere recitation of a wrong source of power in the preamble to the Subordinate Legislation or a statutory order will be of no consequence, if the power could be traced to some other existing provision. What is required to be seen is whether the power exists under any provision of law, but not necessarily in the provision cited in the Rule, notification or order. Viewed from this angle, the answer to the petitioner's contention could be found in Section 211 of the Motor Vehicles Act which reads as follows:

"211. Power to levy fee :--Any rule which the Central Government or the State Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges, plates, counter-signatures, authorisation, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule made thereunder as may be considered necessary".

8. Section 211 shall, of course, be read in conjunction with Section 207(1). If a rule could be made by the State Government governing the procedure for the release of the vehicle, that rule can also prescribe the fee to be said in case an application is required to be filed. The learned Counsel for the petitioner Sri Sivaramakrishnaiah submits that Section 211 applies only to a case where the Central or State Government is empowered to make a rule with reference to the particular subject. Section 207 does not contemplate framing of any rule as to

whom and how the application for release should be submitted. The section itself exhaustively provides for the steps to be taken and the procedure to be adopted after seizure. No rule in respect of release is contemplated by Section 207. Therefore, it is submitted that the question of prescribing fee in exercise of rule making power, does not arise.

9. We are not in a position to lend our approval to the contention advanced by the learned Counsel, Section 207(1) provides for seizure and detention of vehicle in the "prescribed manner". "Prescribed manner" denotes, in the manner prescribed by the Rules (vide Section 2(32)). In the case of P. Ravindranath Reddy and Others Vs. Government of Andhra Pradesh and Others, , an argument was raised before this Court that in the absence of a specific rule-making power conferred on the Central or State Government, seizure and detention of vehicles cannot be resorted to. While dealing with that contention, a Division Bench of this Court to which one of us (PVR, J.) was a party, repelled the said contention. M.N. Rao, J., (as he then was) speaking for the Bench observed in Paragraph 19 thus:

"It is true Chapter XIII does not contain any separate section conferring rule making power on either the Central Government or the State Government. This is no lacuna at all in our view disabling the State Government from making rules; nor can it be said that Rules 448 and 448-A have no application in respect of matters comprehended by them. The power of seizure and detention of vehicles u/s 207(1) has to be exercised "in the prescribed manner". The expression "prescribed" is defined by clause 32 of Section 2 as a meaning prescribed by rules made under this Act". When sub-section (2) of Section 207 itself confers power to make rules, there is no need for engrafting a separate section conferring rule making power on either of the Governments in respect of matters covered by Chapter XIII. The Andhra Pradesh Motor Vehicles Rules, 1989, were made in exercise of powers conferred by Sections 28, 38, 95, 96, 107, 111, 138 and 176 of the Motor Vehicles Act. Rule 448 which deal with power to detain vehicles empowers Assistant Motor Vehicles Inspectors to exercise powers u/s 207. Although the preamble portion of the rules refers to eight sections, including Section 138, the omission of Section 207 therein does not render Rules 448 and 448-A invalid. When a question arises as to whether or not an authority has power to make rules, the inquiry must necessarily be to find out whether the Act confers any power on the authority to make the impugned rules. If the power can lawfully be traced to any provision of the Act, mere non-mentioning or wrong mentioning of the source of power will not afflict the rule with any manner of invalidity. This is the settled legal position. We, therefore, reject the contention advanced on behalf of the petitioners".

10. Though in that case Rule 448-A fell for consideration, we are of the view that the observations in the passage extracted supra are quite apposite in the context of the argument advanced before us. Section 207(1) read with Section 211 can be pressed into service even for upholding the fee prescribed for entertaining the

application for release u/s 207(2). Section 207(1) empowers the authorised Officer to seize and detain the vehicle in the prescribed manner if he has reason to believe that there were certain contraventions as envisaged in the section. When rule making power is vested with the State Government to prescribe the procedure for seizure and detention, as a corollary thereto, it can be said that the rule making power can also extend to the procedure for release of the vehicle. Release is integrally and inextricably connected with seizure and detention, more especially with detention. The power to seize and detain necessarily takes within its fold the ancillary or complementary power to release the vehicle under detention. The provisions dealing with seizure, detention and release have such a close nexus that they should be regarded as constituting a single Code. Hence, the power to make a rule prescribing the steps and formalities to be gone through for the release of the vehicle can be said to be comprehended within the expression "prescribed manner" immediately following the expression "seize and detain". Thus, even in the absence of a provision like Section 207(2), the same provision could have been introduced by means of a rule by the Central or State Government in regard to the release of the vehicle seized and detained. The substantive power to make a rule thus being spelt out from Section 207(1) itself, the same rule can also provide for levy of fee by virtue of the provision contained in Section 211. Thus, we find sufficient authority for the prescription of fee of Rs.25/- to accompany the application for release.

11. The next contention of the learned Counsel for the petitioners is that prescription in the rule that a person whose vehicle is seized should approach only the Secretary, Regional Transport Authority is not valid. There is no reason why the checking Officer himself should not be approached for the release of the vehicle to avoid unnecessary delay, the learned Counsel submits. We fail to see how the impugned rule goes beyond the scope of the provisions of the Act in nominating the Secretary, Regional Transport Authority to receive and dispose of the applications for the release of the vehicle seized. Section 207(2) empowers the authorised Officer to entertain such applications. Section 207(2) speaks of the "transport authority" or "any Officer authorised in this behalf by the State Government". The State Government has specified the Secretary, RTA as the Competent Authority, by framing the impugned Rule. It is not necessary that the authorised Officer should be specified by means of a notification only. It does not make material difference whether the power is conferred by means of a notification or by a rule so long as the Competent Authority i.e., the Government makes the rule or the notification. No particular formality is prescribed for nominating the authorised Officer u/s 207(2). As regards the propriety in conferring the power on the Secretary, RTA who is the highest Officer of the Transport Department in the District, the wisdom of the rule making authority cannot be questioned on any germane ground. There is nothing wrong in confiding that power to an authority higher in rank than the checking Officers who are usually Motor Vehicle Inspectors or the Assistant Motor Vehicle Inspectors. The approach of such higher officer could be expected to be more

objective and unbiased. Thus, while we see no illegality or arbitrariness in conferring the power on the Secretary, RTA to consider applications for release, at the same time, we would like to make it clear that nothing precludes the vehicle driver or operator from approaching the checking Officer then and there at the spot where the vehicle is detained. If the checking Officer is convinced on the basis of the documents or the other evidence produced that the vehicle need not be seized, it is open to such Officer to allow the vehicle to proceed, without prejudice to any further action. We would like to clarify that the mere fact that the power to release the vehicle after the seizure is vested with the Secretary, RTA does not mean that the checking Officer has no choice but to seize the vehicle irrespective of the nature of violations or the satisfaction that may be reached by him on the basis of the documents or other evidence produced, soon after the check if not immediately.

12. In the light of the foregoing discussion, the writ petitions are dismissed. No costs.